

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BASHARAT A. JAMIL and DEPARTMENT OF DEFENSE,
DEFENSE MAPPING AGENCY, Washington, DC

*Docket No. 02-659; Submitted on the Record;
Issued September 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's monetary compensation to zero on the grounds that he had failed to cooperate with vocational rehabilitation efforts without good cause.

The case has been before the Board on a prior appeal. In a decision dated March 6, 1998, the Board reversed a September 6, 1995 Office decision, rescinding acceptance of appellant's claim for an emotional condition.¹ The Board found that the Office had not justified rescission of the accepted condition of anxious depression. The history of the case is discussed in the Board's prior decision and is incorporated herein by reference.

In a letter dated September 12, 2001, the Office noted that he had been directed to meet with a vocational rehabilitation counselor, but appellant had indicated that he would not participate in vocational rehabilitation. The Office advised appellant that his compensation could be reduced to zero if he failed, without good cause, to participate in vocational rehabilitation efforts. Appellant was allowed 30 days to arrange an initial meeting with the rehabilitation counselor.

In a letter dated October 2, 2001, the Office found that appellant had not participated in vocational rehabilitation efforts, or submitted good cause for his failure to participate. The Office indicated that appellant had an additional 15 days to contact the rehabilitation counselor before his compensation would be reduced to 0.

By decision dated October 23, 2001, the Office reduced appellant's compensation to zero on the grounds that he had, without good cause, failed to participate in vocational rehabilitation.

¹ Docket No. 96-2685.

The Board finds that the Office properly reduced appellant's monetary compensation to zero.

5 U.S.C. § 8104(a) provides that the Secretary of Labor may direct a permanently disabled individual whose disability is compensable to undergo vocational rehabilitation. Section 8113(b) of the Federal Employees' Compensation Act provides:

"If an individual without good cause fails to apply for an undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary."

Section 10.519 of the implementing regulations of 5 U.S.C. § 8113(b), further provides in pertinent part:

"To ensure that vocational rehabilitation services are available to all who might be entitled to benefit from them, an injured employee who has a loss of wage-earning capacity shall be presumed to be 'permanently disabled,' for purposes of this section only, unless and until the employee proves that the disability is not permanent. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, [the Office] will act as follows:"

* * *

"(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, meetings with the [Office] nurse, interviews, testing, counseling, functional capacity evaluations and work evaluations), [the Office] cannot determine what would have been the employee's wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, [the Office] will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity and [the Office] will reduce the employee's monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of [the Office]."

In the present case, a second opinion referral psychiatrist, Dr. Brian Schulman, had indicated that in a September 1, 2000 report, appellant would benefit by additional training to update his education and prior skills. The Office authorized vocational rehabilitation services and assigned appellant a rehabilitation counselor. An initial interview was scheduled for May 4,

2001, but he did not attend. By letter dated May 24, 2001, appellant indicated that he would not participate in vocational rehabilitation, based on the advice of his attending physician. Appellant submitted a report dated August 15, 2001, from Dr. Mohammed Javaid, a psychiatrist. Dr. Javaid opined that appellant had secondary issues regarding vindication and redemption through legal channels and he was not considered a candidate for the rehabilitation process until his legal cases were decided.

As the Board noted in *Linda McCormick*, the initial interview is an important part of the rehabilitation process.² The objectives of the initial interview with the rehabilitation counselor include explanation of the procedures regarding rehabilitation and obtaining sufficient information about the injured workers' needs, motivations and abilities to properly determine the need for rehabilitation services.³ Dr. Javaid did not provide a medical report with respect to the initial stages of the rehabilitation process. He refers generally to the rehabilitation process, without providing a clear explanation as to why appellant's medical condition would prevent appellant from attending even the initial interview. In the absence of any medical rationale on the issue presented, Dr. Javaid's report is of diminished probative value. The Board finds that appellant did not provide good cause for his failure to participate in any aspect of the vocational rehabilitation process.

Since appellant failed, without good cause, to apply for and undergo vocational rehabilitation when directed by the Office, his compensation may be reduced under section 8113(b) until he complies with the direction of the Office. As 20 C.F.R. § 10.519 clearly states, when the failure to participate occurs in the early but necessary stages of the vocational rehabilitation effort, the Office may assume that appellant would have returned to work with no loss of wage-earning capacity. Accordingly, the Board finds that the Office properly reduced appellant's compensation to zero in this case.

² 44 ECAB 958, 966 (1993).

³ *Id.*

The October 23, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 12, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member